IN THE HIGH COURT OF BOMBAY AT GOA

STAMP NUMBER 1218 OF 2004.

STATE
Through Public Prosecutor,
High Court of Bombay at Panaji,
Panaji, Goa. ..... Applicant/Appellant.

Versus

1. Pandurang s/o Harichandra
Toraskar, r/o House No.1237/1,
Painawada, Tivim, Bardez,
Goa.

2. Gurudas s/o Pandurang
Toraskar,
r/o House No.1237/1, Painawada,
Tivim, Bardez, Goa. .... Respondents/Original Accused.

Mr. S.N. Sardessai, Public Prosecutor for the State/Applicant.

Mr. A.R.Kantak, Advocate for the Respondents.

CORAM: N. A. BRITTO, J.

DATE: 23rd SEPTEMBER, 2004.

ORAL ORDER:

The State seeks leave to appeal against the Judgment/Order dated 31.12.2003 of the learned J.M.F.C., Bicholim by which the respondents-accused have been acquitted under Sections 353, 504, 506(ii) r/w S.34 of I.P.C.

2. Heard Shri S.N. Sardessai, the learned P.P. and Shri A.R. Kantak, the learned counsel of the accused.

3. The case of the prosecution was that on 25.6.2001 at about 10.45 hrs. both the said accused in furtherance of common intention, abused the complainant (P.W.2) Peter Martins who, at the relevant time, was working as Village Panchayat Secretary, with filthy words and assaulted him, causing simple injury and also threatened him with dire consequences to break his limbs when the said complainant had gone to serve the notice issued by the Village Panchayat to the said accused persons.

4. The learned J.M.F.C. After having framed the charge against the accused, recorded the evidence of eleven witnesses and after considering the said evidence chose to give the benefit of doubt to the accused and acquit them for the said offences.

5. Shri Sardessai, the learned P.P. has submitted that the learned J.M.F.C. has failed to consider the evidence of P.W.2, P.W.4, P.W.6, P.W.7 and P.W.8 in proper perspective and therefore the learned J.M.F.C. was not justified in acquitting the said accused.

6. In fact, the learned J.M.F.C. found that there was not even sufficient corroboration in the evidence of the said complainant (P.W.2) Peter Martins and the Peon of the Village Panchayat namely P.W.4 Raghunath who had gone together to serve the notice on the accused who are stated to be father (A.1) and son (A.2). The learned J.M.F.C. also rightly noted that P.W.6 Sushant had not supported the case of the prosecution and that on the contrary, his evidence was hearsay. Indeed P.W.6 Sushant had stated that he had heard in the market

that A.2 had assaulted the said complainant- P.W.2. P.W.7 Kundan was declared hostile and cross-examined and even in the cross-examination he admitted that he was not in talking terms with the accused. P.W.8 Sanjay had also not spoken of any assault on the said P.W.2 though he had repeated the bad words allegedly given by the accused.

7. In my view, the view arrived at by the learned J.M.F.C., in acquitting the accused after considering the evidence on record is a plausible view. The Supreme Court time and again has exhorted the High Court to keep in mind whilst granting leave to appeal and hearing appeal on acquittal, the view of the Trial Court as to the credibility of the witnesses, the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial, and the right of the accused to the benefit of doubt. The Supreme Court has also stated that the appellate Court should be slow in disturbing the finding of fact arrived by a Judge who had the advantage of seeing the witness.

8. I am therefore of the view that this was certainly a fit case where the accused deserved to be given benefit of doubt and acquitted.

9. Application for leave to appeal is hereby rejected.

N. A. BRITTO, J.

sl.